

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NATALIE F. SIMMONS and STEPHEN
H. SIMMONS, husband and wife,
KATHERINE A. ROHR-SMITH, and
ZALDY FERNANDEZ, individually and
on behalf of others similarly situated,

Plaintiffs,

v.

ASSET RECOVERY GROUP, INC.
d/b/a ASSET RECOVERY GROUP OF
WASHINGTON, an Oregon corporation,
and ROBERT S. FRIEDMAN,

Defendants.

Case No.: 2:16-cv-794

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
DAMAGES

CLASS ACTION PURSUANT TO FED.
R. CIV. P. 23(b)(2) AND 23(b)(3)

JURY TRIAL DEMANDED

Plaintiffs, individually and as class representatives for two Washington State Classes of similarly situated persons, bring this action against Asset Recovery Group, Inc. d/b/a Asset Recovery Group of Washington (“Asset Recovery”) and Robert S. Friedman (“Friedman”) for violations of federal and state law as set forth herein.

I. INTRODUCTION

1.1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has
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1 determined that abusive debt collection practices contribute to the number of personal
2 bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.
3 Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter
4 “FDCPA”), to eliminate abusive debt collection practices by debt collectors, to insure that
5 debt collectors who refrain from using abusive debt collection practices are not competitively
6 disadvantaged, and to promote consistent State action to protect consumers against debt
7 collection abuses.

9 1.2. Plaintiffs bring this action for declaratory and injunctive relief, statutory
10 damages, actual damages and restitution on behalf of themselves and as class
11 representatives for Classes of similarly situated persons stemming from unfair and
12 deceptive collection practices by Defendants in violation of the FDCPA and the
13 Washington Consumer Protection Act, RCW 19.86 (“CPA”), Washington’s district court
14 venue statute, RCW 3.66.040(1), and King County District Court Local Civil Rule 3.1.

16 1.3. The King County District Court (“KCDC”) system is divided into three
17 divisions, South, East, and West, which include the ten courthouses where cases are filed
18 and heard. The Burien, Kent, King County Regional Justice Center, and Vashon
19 courthouses are in the South Division; the Issaquah, Bellevue, and Redmond courthouses
20 are in the East Division; and the Seattle, Shoreline, and King County Correctional Facility
21 courthouses are in the West Division.

23 1.4. The KCDC website describes these three divisions, South, East and West,
24 and the geographic areas each of them serves, stating “Civil filing areas have been added
25 to each division which represent the cities served by the division for civil and small claims
26

1 filings.” <http://www.kingcounty.gov/courts/district-court/locations.aspx> (last updated
2 December 31, 2015; last retrieved May 29, 2016).

3 1.5. The King County Code expressly contemplates this KCDC system of local
4 case filing, stating that “The King County council . . . support[s] the concept of local filing
5 . . . for a more equitable . . . system of justice for the citizens of King County” and that the
6 court facilities shall be used to “promote . . . access to justice.” King County Code
7 2.68.005. http://www.kingcounty.gov/council/legislation/kc_code/05_Title_2.aspx (last
8 updated June 15, 2015; last retrieved May 29, 2016).
9

10 1.6. Defendants unlawfully and abusively engaged in the unfair, deceptive and
11 unlawful practice of filing debt collections lawsuits in a Division where debtor defendants
12 neither lived nor signed the contracts on which they were being sued (“inconvenient forum”).
13 Defendants began engaging in these unfair and deceptive forum abuse practices more than
14 four years prior to the filing of the Complaint in this matter.
15

16 1.7. By suing debtor defendants in an inconvenient forum, regardless of where in
17 King County the debtor defendants reside and/or signed the purported contract upon which
18 they were sued, Defendants violated the FDCPA, which requires debt collectors to bring
19 legal actions to collect alleged debts from a consumer “only in the judicial district or similar
20 legal entity – (A) in which such consumer signed the contract sued upon; or (B) in which
21 such consumer resides at the commencement of the action.” 15 U.S.C. § 1692i. By suing
22 debtor defendants in an inconvenient forum, Defendants also violated the CPA and
23 Washington’s district court venue statute, RCW 3.66.040(1).
24

25 1.8. By filing their debt collection actions in the incorrect venue in the KCDC
26 system, Defendants misled and deceived Plaintiffs and other debtor defendants, causing them

1 to believe they were required to defend themselves in the inconvenient forum (to where they
2 must travel and which is less accessible) when in fact the actions were not properly filed by
3 Defendants.

4 1.9. Defendants have conspired and acted in concert with each other, and have
5 aided and abetted each other to perpetuate their conduct and the forum abuse practices
6 described herein, and each is jointly and severally liable for their conduct.
7

8 1.10. Upon information and belief, Defendants have solicited and been enabled and
9 encouraged to engage in their unfair and deceptive practice of filing debt collection lawsuits
10 in inconvenient forums through secret and deceptive *ex parte* communications and special
11 arrangements between and among Defendants and judges of the KCDC and other KCDC
12 officials, including the Presiding Judge of the East Division.

13 1.11. This lawsuit seeks to put an end to Defendants' forum abuse and provide
14 relief to Plaintiffs and the Classes by obtaining a declaration that Defendants' practice of
15 bringing collection actions in a Division regardless of where in King County the debtor
16 defendant resides is unfair, deceptive and unlawful; enjoining Defendants from continuing to
17 engage in this unfair and deceptive practice; vacating the default judgments that Defendants
18 have unlawfully obtained; and ordering restitution by Defendants of all amounts Defendants
19 have unlawfully recovered from Plaintiffs and the Classes as a result of the unlawful default
20 judgments.
21

22 1.12. Plaintiffs herein are debtor defendants sued by Defendants in a Division of
23 KCDC in which they neither lived nor where they signed the contracts for which they were
24 sued.
25
26

II. VENUE, JURISDICTION AND PARTIES

2.1. At all relevant times, Plaintiffs were and now are individuals and currently reside in Seattle, Washington, and resided there at the time Defendants filed and served the debt collection actions which are the subject of this complaint.

2.2. Defendant Asset Recovery is an Oregon-based corporation and holds a Washington State Collection Agency License. Said Defendant is in the business of regularly collecting alleged consumer debts originally owed to others.

2.3. Defendant Asset Recovery is a “debt collector” as defined under the FDCPA, and acted as such at all times relevant to this Complaint.

2.4. Defendant Freidman is an attorney licensed in Washington and a debt collector who regularly filed and files debt collection cases in King County, Washington on behalf of, but not limited to, Defendant Asset Recovery.

2.5. Defendant Freidman regularly collected and collects, or attempted to collect and attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another through Asset Recovery, and signed and signs complaints filed in King County District Court Divisions in actions against Plaintiffs and members of the Classes described herein.

2.6. Defendants are “debt collectors” as defined under the FDCPA, and acted as such at all times relevant to this Complaint.

2.7. This Court has jurisdiction under 15 U.S.C. §1692k (FDCPA); 28 U.S.C. §1331 (general federal question); 28 U.S.C. §1337 (interstate commerce); and 28 U.S.C. §1367 (supplemental jurisdiction). Venue and personal jurisdiction are proper in this District because Defendant Asset Recovery is registered to do business in Washington State and

1 Defendants conduct extensive business in this District.

2 **III. FACT ALLEGATIONS**

3 3.1. Plaintiffs and members of the Classes allegedly incurred certain financial
4 obligations related to consumer debt.

5 3.2. These alleged financial obligations were primarily for personal, family or
6 household purposes and are therefore a “debt” as that term is defined by 15 U.S.C.
7 §1692(a)(5).
8

9 3.3. Plaintiffs and members of the Classes allegedly failed to pay their alleged
10 debt.

11 3.4. Subsequently, the alleged debt of Plaintiffs and members of the Classes were
12 assigned, placed, or otherwise transferred to Defendants for collection.

13 3.5. On or about February 9, 2015, Defendants filed a collection lawsuit against
14 Plaintiffs Simmons; on or about June 10, 2015, Defendants filed a collection lawsuit against
15 Plaintiff Rohr-Smith; and on or about January 8, 2015, Defendants filed a collection lawsuit
16 against Plaintiff Fernandez.
17

18 3.6. In the four years preceding the filing of this Complaint, Defendants have filed
19 hundreds of collection lawsuits in inconvenient forums against debtor defendants who
20 resided in another division of the KCDC.
21

22 3.7. By engaging in this unfair and deceptive practice of forum shopping,
23 Defendants have violated Washington’s district court venue statute, RCW 3.66.040(1).

24 3.8. Washington’s district court venue statute, RCW 3.66.040(1), provides that
25 proper venue for collection actions brought under RCW 3.66.020(1) for recovery of money
26 arising on a contract lies in the “district in which the defendant . . . resides at the time the

1 complaint is filed.” Under RCW 3.66.040(1), it was unlawful, unfair and deceptive for
2 Defendants to file collection actions in Divisions in which debtor defendants did not reside.

3 3.9. By engaging in its unfair and deceptive practice of suing debtor defendants in
4 inconvenient forums, the great majority of whom did not reside in the Division in which they
5 were sued, Defendants also violated the letter and spirit of the FDCPA, which is intended to
6 eliminate abusive debt collection practices and requires that debt collectors bring legal
7 actions to collect an alleged debt from a consumer “only in the judicial district or similar
8 legal entity – (A) in which such consumer signed the contract sued upon; or (B) in which
9 such consumer resides at the commencement of the action.” 15 U.S.C. § 1692i.

11 3.10. Defendants’ practices as described herein are and have been knowing, willful
12 and intentional.

13 3.11. Within one year of the date of filing of this Complaint, Defendants filed a
14 collection complaint against Plaintiff Rohr-Smith and members of the FDCPA Class as
15 defined herein, and served summonses and copies of the complaints on them.

17 3.12. At the time the collection lawsuits were filed against Plaintiffs and members
18 of the Classes, Plaintiffs resided in Seattle, Washington, and members of the Classes resided
19 in locations in King County which were known by Defendants, and which were not in the
20 judicial district served by the Division of KCDC in which the collections lawsuits were filed,
21 nor were any contracts that provided the basis for the lawsuits executed in the judicial district
22 served by the Division of the KCDC.

24 3.13. Within four years of the date of the filing of this Complaint, Defendants filed
25 collection complaints against Plaintiffs and members of the CPA Class and served a
26 summons and copies of the complaints on each of them.

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1 3.14. The summons and complaint served on Plaintiffs and members of the Classes
2 stated that they were being sued in a Division in which they did not live and where the
3 purported contract upon which they were being sued was not signed.

4 3.15. The summons informed Plaintiffs and members of the Classes that they were
5 required to file a defense in writing at the inconvenient forum and serve Asset Recovery's
6 attorney and that if they did not do so within 20 days, a default judgment could be entered
7 against them.

8 3.16. Thereafter, default judgment motions were filed against Plaintiffs and
9 members of the Classes in the inconvenient forum.

10 3.17. In said motions it was falsely and deceptively stated that Plaintiffs and
11 members of the Classes "reside[d] within the judicial district" of the KCDC Division, when
12 in fact Plaintiffs and members of the Classes lived in a Division outside of the inconvenient
13 forum.

14 3.18. After said default motions were filed, default judgments were entered against
15 Plaintiffs Simmons and Rohr-Smith and members of the Classes in the inconvenient forum.

16 3.19. The default judgments against Plaintiffs Simmons and Rohr-Smith and
17 members of the Classes were for the principal amounts claimed, plus prejudgment interest,
18 statutory attorney fees, a case filing fee, ex parte fee, and service of process fee, plus post-
19 judgment interest at 12% per annum.

20 3.20. Thereafter Defendants collected or attempted to collect on the judgments as
21 to said Plaintiffs and the proposed members of the Classes.

IV. FIRST CAUSE OF ACTION
Fair Debt Collection Practices Act Violation

4.1. Plaintiff Rohr-Smith re-alleges the foregoing paragraphs inclusive as though fully set forth herein.

4.2. Congress enacted the FDCPA in response to “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors [which] contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” *See* 15 U.S.C. § 1692(a).

4.3. The FDCPA requires a debt collector bringing a legal action on a debt against a consumer to bring it “only in the judicial district or similar legal entity – (A) in which such consumer signed the contract sued upon; or (B) in which such consumer resides at the commencement of the action.” *See* 15 U.S.C. § 1692i.

4.4. Defendants filed lawsuits against Plaintiff Rohr-Smith and FDCPA Class members in a judicial district in which they did not reside or sign the alleged contracts at issue, and therefore violated the FDCPA. Plaintiff Rohr-Smith, and each member of the FDCPA Class, suffered injury as a result of the improper filings and are entitled to recover statutory damages pursuant to 15 U.S.C. § 1692k against Defendants.

4.5. The conduct of Defendants described herein was knowing, willful, and intentional.

V. SECOND CAUSE OF ACTION
Washington Consumer Protection Act Violation

5.1. Plaintiffs re-allege the foregoing paragraphs inclusive as if fully set forth herein.

1 5.2. Washington's CPA, entitled "Unfair Business Practices-Consumer
2 Protection," states: "Unfair methods of competition and unfair or deceptive acts or practices
3 in the conduct of any trade or commerce are hereby declared unlawful." *See* RCW
4 19.86.020.

5 5.3. The CPA applies to the actions at issue herein because Plaintiffs and the CPA
6 Class members are "consumers," Defendants are each a "business," they regularly (if not
7 exclusively) engage in the practice of collecting debts, the challenged conduct occurred in the
8 course of trade or commerce, Plaintiffs and the Class members were damaged in their
9 property by Defendants' actions, and the complaint involves a matter of public interest that is
10 capable of repetition and affects other consumers in this State.

11 5.4. Defendants' unfair and deceptive acts and practices repeatedly occurred in
12 their trade or business and were capable of deceiving a substantial portion of the public.
13

14 5.5. The Washington Supreme Court has recognized the public policy significance
15 of regulating the debt collection industry and has specifically found that the business of debt
16 collection affects the public interest, and collection agencies are subject of strict regulation to
17 ensure they deal fairly and honestly with alleged debtors.
18

19 5.6. Defendants' practice of filing collection lawsuits against debtor defendants in
20 inconvenient forums, as described herein, was and is an unfair and deceptive act and practice
21 under the CPA.
22

23 5.7. Defendants knew that KCDC General Administrative Order ("GAO") No. 13-
24 10, dated October 25, 2013; GAO No. 13-08, dated August 30, 2013; GAO No. 13-02, dated
25 February 22, 2013; and GAO No. 09-126, dated December 18, 2009, refer to where cases
26 shall be "heard," and not where cases shall be "filed," and did not authorize or purport to

1 authorize Defendants to file collection lawsuits against debtor defendants in a certain
 2 Division, regardless of where in King County the debtor defendant resides or where the
 3 purported contract sued upon was signed.

4 5.8. Defendants' knowledge that the GAOs did not authorize or purport to
 5 authorize Defendants to file collection lawsuits against debtor defendants in a certain
 6 Division, regardless of where in the county the debtor defendant resides or where the
 7 purported contract at issue was signed, is evidenced by emails evidencing secret, *ex parte*
 8 communications between and among Defendants and other debt collection attorneys, and the
 9 Judges and personnel of the KCDC.
 10

11 5.9. Defendants' practice of filing collection lawsuits in an improper venue and
 12 serving debtor defendants with notices falsely notifying defendant debtors that they should
 13 defend the lawsuit in an unlawful venue was and is an unfair and deceptive practice under the
 14 CPA.
 15

16 5.10. Defendants' practice of filing default judgment motions in a KCDC Division
 17 in which they falsely and deceptively have stated and state that defendant debtors "reside
 18 within the judicial district," when those defendant debtors reside in other Divisions of the
 19 KCDC Court, was and is an unfair and deceptive practice under the CPA.
 20

21 5.11. Defendants' practice of filing default judgment motions in Divisions
 22 regardless of where in the KCDC the debtor defendant resides, and in violation of the venue
 23 provision of the FDCPA, 15 U.S.C. § 1692i, was and is an unfair and deceptive practice
 24 under the CPA.

25 5.12. As a direct and proximate result of Defendants' unfair and deceptive acts and
 26 practices, Plaintiffs and members of the Classes have suffered default judgments that were

1 entered against them in a Division, which was not the Division of the KCDC in which they
2 resided or where the contract at issue was signed.

3 5.13. Defendants, on a continuing basis, are engaged in attempting to enforce the
4 default judgments that they have unfairly, deceptively and unlawfully obtained against
5 Plaintiffs and members of the Classes through their case filing practices described herein.

6 5.14. Defendants' wrongdoing in obtaining default judgments, and thereafter
7 pursuing collection of the judgments, including garnishments, based on these default
8 judgments, through its unfair and deceptive filing practices as described herein, are
9 repetitive and continuing in nature.

10 5.15. If these unfair and deceptive case filing practices by Defendants are not
11 enjoined, there is a high likelihood that Defendants' practice of obtaining default judgments
12 in an inconvenient forum against debtor defendants who reside in other Divisions of the
13 KCDC will continue.

14 5.16. There is a high likelihood that Defendants' unfair and deceptive case filing
15 practices will continue to injure Plaintiffs and members of the Classes if those practices are
16 not enjoined.

17 5.17. The high likelihood that Defendants' unfair and deceptive case filing practices
18 will continue to injure Plaintiffs and members of the Classes if those practices are not
19 enjoined is also demonstrated by the fact that Defendants are active debt collectors in King
20 County, coupled with the fact that 31.9% of the Seattle population and 31.2% of the State as
21 a whole has debt that is currently in collections. Urban Institute, *Delinquent Debt in America*
22 (July 2014), Tables A-1 & A-2, [http://www.urban.org/sites/default/files/alfresco/publication-](http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413191-Delinquent-Debt-in-America.pdf)
23 [pdfs/413191-Delinquent-Debt-in-America.pdf](http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413191-Delinquent-Debt-in-America.pdf) (last retrieved February 1, 2016).
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1 5.18. Plaintiffs and members of the Classes will suffer continuing, immediate and
2 irreparable injury absent the issuance of declaratory and injunctive relief.

3 5.19. Plaintiffs and members of the Classes have no complete, speedy and adequate
4 remedy at law with respect to Defendants' continuing conduct in obtaining these unfair,
5 deceptive and unlawful default judgments described herein.

6 5.20. Preliminary and final declaratory and injunctive relief, including restitution of
7 any amounts unlawfully obtained, is necessary to prevent further injury to Plaintiffs and
8 members of the Classes caused by these unfair, deceptive and unlawful default judgments.
9

10 **VI. CLASS ACTION ALLEGATIONS**

11 6.1. Plaintiffs reallege the foregoing paragraphs as if fully stated herein.

12 6.2. Pursuant to Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), Plaintiffs bring this action
13 on behalf of the following Classes:

14 FDCPA Class: All persons sued by Defendants in a county
15 where there is more than one division in a District Court, in a
16 division in which they did not reside, or sign the alleged at-
17 issue contract, on or after a date one year prior to the filing of
this action.

18 CPA Class: All persons sued by Defendants in a county where
19 there is more than one division in a District Court, in a division
20 in which they did not reside, or sign the alleged at-issue
21 contract, on or after a date four years prior to the filing of this
action.

22 6.3. **Numerosity.** The Classes are so numerous that joinder of all members is
23 impracticable. Upon information and belief, the Classes exceed 100 in number.

24 6.4. **Common Questions of Law and Fact.** The questions of law and fact are the
25 same for members of both Classes, including whether the conduct of the Defendants in filing
26 in District Court Divisions where a Class member neither resided at the commencement of

1 the action nor in which the consumer signed the contract serving as the basis of the alleged
2 debt, violated the FDCPA and the CPA. The Class members share issues of law and fact as to
3 whether Defendants' lawsuit filing policies and practices violate the FDCPA and the CPA,
4 such that those issues dominate any issues that affect only individual members.

5 **6.5. The Plaintiffs' Claims Are Typical of the Classes.** Plaintiffs' claims are
6 typical of the Classes in that they arise from Defendants' repeated violations of the FDCPA
7 and the CPA as to Plaintiffs and all other members of the Classes.

8 **6.6. The Plaintiffs Will Fairly and Adequately Protect the Classes.** Plaintiffs
9 will adequately represent and protect the interests of the Classes because they have retained
10 competent and experienced counsel and their interest in the litigation is not antagonistic to
11 the other members of the Classes.

12 **6.7. A Class Action is Maintainable Under Fed. R. Civ. P. 23(b)(3).** The
13 questions of law and fact common to all members of the Classes predominate over questions
14 affecting only individual members of the Classes, because all members of the Classes have
15 been subjected to Defendants' unlawful conduct. The prosecution of separate actions by
16 individual members of the Classes against Defendants would create the risk of inconsistent or
17 varying adjudications and incompatible standards of treatment. There are no other pending
18 class actions concerning these issues against these same Defendants. A class action is
19 superior to any other available means for the adjudication of this controversy. This action
20 will cause an orderly and expeditious administration of the Classes' claims; economies of
21 time, effort and expense will be fostered; and uniformity of decisions will be ensured at the
22 lowest cost and with the least expenditure of judicial resources.
23
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1 6.8. **A Class Action is Maintainable Under Fed. R. Civ. P. 23(b)(2).**

2 Defendants have acted on grounds generally applicable to Plaintiffs and the Classes as
3 alleged herein, thereby making appropriate injunctive and declaratory relief, as well as
4 incidental damages, with respect to the Classes as a whole.

5 **VII. PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs request that a judgment be entered against the Defendants
7 as follows:
8

9 1. An injunction preventing Defendants from filing debt collection actions in
10 District Courts in the State of Washington that have two or more Divisions or judicial
11 districts, in a Division or judicial district where the defendant does not reside and/or where
12 the contract that serves as the basis of the action was not signed;

13 2. An award of damages for Plaintiff Rohr-Smith and FDCPA Class members,
14 pursuant to 15 U.S.C. §1692k, but in any event for not less than \$1,000 for Plaintiff Rohr-
15 Smith and for each Class member, for each violation, subject to limits provided by law;

16 3. An award of damages to Plaintiffs Simmons, Rohr-Smith and Fernandez and
17 members of the Classes as provided by the CPA, in an amount as proven at trial;

18 4. An award trebling the award of CPA damages because of the willful and
19 intentional misconduct of Defendants as alleged herein;
20

21 5. An order requiring restitution to each member of the Classes of all sums
22 collected by Defendants, including attorney fees, court costs, other fees and amounts
23 towards the debts that were the basis of the actions brought against members of the Classes;
24

25 6. An order directing Defendants to move to vacate all defaults judgments
26 obtained against members of the Classes, and to report the results of their actions to the

1 Court;

2 7. Alternatively, if the Court does not grant the relief requested in Paragraph 6
3 of these Requests for Relief, an order directing Defendants to locate the members of the
4 Classes against whom a default judgment was entered, notify them that a default judgment
5 has been entered against them and that they have the right to file a motion to re-open their
6 case, and provide them with the case name, name of the court in which the case was filed,
7 and the case number in each such action;
8

9 8. An order directing Defendants to notify all credit reporting bureaus of the
10 vacated default judgments and request removal of any negative reporting on Plaintiffs' and
11 members of the Classes' credit reports relating to such lawsuits and default judgments;

12 9. For an award of costs and reasonable attorney's fees pursuant to the CPA
13 and 15 U.S.C. §1692k, *et seq.*;

14 10. For pre- and post- judgment interest on the above amounts at the rate
15 authorized by law;
16

17 11. For leave to conform their pleadings to the proof presented at trial; and

18 12. For such other relief as the Court deems just and equitable.

19 **IX. REQUEST FOR TRIAL BY JURY**

20 Plaintiffs hereby request trial by jury pursuant to U.S. Const. Amend. 7.

21 Dated: May 31, 2016
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